THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 6622 OF 1995

Date: 02.03.2006

Between:

A.Seshaiah, S/o A. Nagaiah, aged: 57years, Retired Sub-Inspector, Central Reserve Police Force, R/o Kavali Town, Nellore District

…. Petitioner

and

1. The Inspector General of Police, Central Reserve Police Force, Banjara Hills, Hyderabad and another.

… Respondents.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 6622 OF 1995

ORDER:

Questioning the action of the respondents in proceedings dated 21.04.1993 and 12.05.1993, in illegally and unilaterally recovering amounts from him, after he had retired from service, and without holding any enquiry, affording him an opportunity of being heard or indicating the reasons for such recovery, the present writ petition is filed.

2. Brief facts, to the extent necessary, are that the petitioner joined in the Central Reserve Police Force on 01.06.1968. While working in the category of Sub-Inspector the petitioner performed duties as Manager of the Group Centre

Co-operative Shop, C.R.P.F. Hyderabad from 24.11.1990 to 24.06.1992 and retired from service on 30.06.1992. The petitioner's request to be paid, his retiral benefits namely Leave Encashment of Rs.14,705/-, Group Insurance of Rs.3,624/- and bus fare luggage charges of Rs.2,094/-, resulted in his receiving proceedings dated 21.04.1993 stating that a court of enquiry had been ordered, by order dated 28.07.1992, to find out the circumstances under which proceeds, of the sale of edible oils, was not accounted for correctly, to fix the actual quantum of loss and to pin-point the persons responsible. In the said proceedings it is stated that the extent of discrepancy noticed was of Rs.19,581.89Ps and that this amount was proportionately recovered at the rate of 40% from the petitioner, 30% from the Head Constable and 30% from the Constable. The petitioner's proportionate share of Rs.7,832.75 ps was sought to be recovered.

3. The petitioner submitted a representation on 01.05.1993 to the Additional Deputy Inspector General of Police, C.R.P.F., Hyderabad denying liability and contending that when he handed over charge there was no deficiency and that the proceeds of the sale of edible oil may have been misappropriated by other employees. Petitioner would contend that the stock position was monitored regularly by him when he was incharge and that there were no discrepancies during that period. Since his representations did not meet with any positive response, the petitioner submitted another representation on 05.05.1993. The 2nd respondent, in his letter dated 12.05.1993, reiterated that the action in recovering the amount was justified. The petitioner submitted a representation to the 1st respondent on 17.05.1993 and thereafter to the Director General, CRPF, New Delhi on 17.06.1993. He again sent a reminder on 24.12.1993, but to no avail.

4. Several contentions are raised regarding the legality of the action taken in recovering the amount, that the respondent had no jurisdiction to fix liability on the petitioner after he had retired from service, that the employer had no power to withhold the retiral benefits of an employee, that too without following the prescribed procedure, without affording an opportunity of being heard and without indicating reasons for the proposed recovery.

5. A counter-affidavit is filed by the Deputy Inspector General, CRPF wherein it

is admitted that during handing/ taking over charge between the petitioner and the subsequent Sub-Inspector, no deficiency was reported. It is however stated that, while handing/taking over the charge the requirement of physical verification had been overlooked. Respondents would deny the petitioner's contention that he had ensured proper maintenance of stock. It is stated that in the court of enquiry it had been proved that the deficiency was to a tune of Rs.19,581.89ps which arose during the periods from March 1992 to 25.07.1992. It is stated that since the Manager is responsible for the receipt and expenditure of the commodity, and as the petitioner had failed to exercise proper control, he was held responsible for 40% of the deficiency and for the remaining 60%, the Head Constable and the Constable, were held responsible for 30% each. It is stated that a proper court of enquiry was held wherein all relevant statements, including that of the petitioner, had been recorded and that the recovery was just and proper. It is stated that misappropriation was mostly prior to the date of retirement of the petitioner and that the recovery was effected only after conducting a proper court of enquiry in which the petitioner's statement was also recorded by sending a questionnaire to him.

6. The learned Standing Counsel, appearing on behalf of the respondents, produced the record of the court of enquiry. A perusal thereof would indicate that several individuals were sent questionnaires to be answered and their statements, in reply to the questionnaire, form the basis for the court of enquiry to hold the petitioner guilty of the deficiency of edible oil stock proportionate to an extent of 40%.

7. It is well settled that no order, which results in civil consequences, can be passed without complying with the rules of natural justice. The basic rules in this regard would require that an employee is issued a notice and in case he denies the allegations made against him, a proper enquiry is conducted to verify the truth or otherwise of the charges. The delinquent employee, in such an enquiry, is required to be given an opportunity of examining and cross examining witnesses. Except for procuring independent statements from several persons, through the method of sending questionnaire, no proper enquiry was conducted giving a reasonable opportunity to the petitioner of defending himself.

8. According to the respondents, the period of deficiency was from March 1992

till 25th July 1992. Since he had retired from service on 30.06.1992, for the subsequent period from 01.07.1992 till 25.07.1992 the petitioner could not have been held accountable. The extent of deficiency, during the period prior to the petitioner's retirement on 30.06.1992, and the basis for holding that the petitioner is liable for 40% thereof, have not even been specified in the impugned order. Conclusions have been arrived at without any rational basis. The impugned action of the respondents in seeking to recover a sum of Rs.7,832.75ps is in violation of principles of natural justice and as such is set aside.

9. The learned Standing Counsel for CRPF would seek liberty to take action against the petitioner in accordance with law. Whether the respondents, at this distance of time, are empowered in law to take disciplinary action against the petitioner, is not clear. Suffice to state that in case no action is taken against the petitioner, in accordance with law, within a period of four months from today, the respondents shall refund the sum of Rs.7,832.75ps illegally recovered from the petitioner.

10. The writ petition is disposed of. There shall however be no order as to costs.

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RAMESH RANGANATHAN, J

Date: 02.03.2006

MRKR